

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 2508

IN THE MATTER OF:

Served December 5, 1983

Application of HERBERT G. STEPHENS )  
to Transfer Certificate of Public )  
Convenience and Necessity No. 69 )  
to COTTER LIMOUSINE OF WASHINGTON, )  
INC. )

Case No. AP-83-44

By application filed July 20, 1983, Herbert G. Stephens, ("Stephens"), a sole proprietor trading as Stephens Tour Service, seeks approval pursuant to Title II, Article XII, Section 12(b) of the Compact to transfer by sale his Certificate of Public Convenience and Necessity No. 69 to Cotter Limousine of Washington, Inc. ("Cotter Limousine").

In support of the application, the parties have submitted an executed bilateral contract of sale, financial statements of Cotter Limousine, and a projected operating statement for the first year of Cotter Limousine's van operations. The Commission held a public hearing on this matter on October 24, 1983. Evidence was submitted showing that the required notice had been published in a newspaper of general circulation in the Metropolitan District and that the applicants had otherwise complied with the Commission's Order No. 2444. No protest to the application was timely filed. \*/

The contract between the parties calls for Cotter Limousine to purchase the Certificate for \$1,000. Cotter Limousine would also buy Stephens' 1980 fifteen-passenger van for \$8,000. A total of \$4,000 has been paid to Stephens as a deposit on the van and the balance of \$4,000 for the van and \$1,000 for the Certificate is to be paid within five days after final approval of the transfer.

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\*/ The petition of Executive Limousine Service, Inc., for Leave to Intervene in Opposition to the Transfer was denied by the Commission. See Order No. 2489.

Cotter Limousine is a closely held corporation organized under the laws of the District of Columbia on October 8, 1982. Since that date, it has been engaged in providing so-called "luxury limousine service" in the Metropolitan District. Because these vehicles have a designed capacity of eight passengers or less, Cotter Limousine does not presently hold any authority from this Commission. If the transfer is approved, Cotter Limousine will provide van service through an unincorporated division of the company, Cotter Executive Van Service.

The evidence of record in this proceeding indicates that Stephens provided continuous service to the public since issuance of Certificate No. 69 in 1980. In calendar year 1982, Stephens transported 320 passengers and earned \$5,783 from WMATC operations. Stephens testified at the public hearing that he continued to provide service in 1983 up until the application to transfer Certificate No. 69 was filed on July 20, 1983. Thereafter, Cotter Limousine has provided service to the public under that certificate pursuant to the Commission's grant of temporary approval on July 27, 1983. Stephens further testified that he would have requested approval to cease operations on July 28, 1983, when his insurance policy expired, if Cotter Limousine had not agreed to purchase Certificate No. 69.

William L. Cotter, Jr., president of Cotter Limousine, testified at the hearing as to his substantial experience in the business of providing limousine and van service to the public and the willingness of the shareholders of Cotter Limousine to contribute additional working capital and acquire new operating equipment as needed to meet demands for service. Testimony was also adduced regarding maintenance, safety and operational plans followed by the company. The witness described the actions taken by the investors in Cotter Limousine since March 1983 to strengthen the overall financial condition of the company. Since that date, the shareholders have: (1) contributed \$225,500 in loans for working capital; (2) agreed to invest an additional \$75,000 by the end of 1983 to pay down a working capital loan; (3) applied \$58,000 from the sale of four sedans to reduce the company's outstanding equipment loan from the bank; and (4) renegotiated that equipment loan from a demand note to a four-year installment note. The company's accountant introduced evidence regarding its financial viability indicating progress towards becoming a profitable concern.

Title II, Article XII, Section 12(b) of the Compact requires a finding by the Commission that a proposed transfer of a certificate of public convenience and necessity is consistent with the public interest. In determining whether this transaction is consistent with the public interest, the Commission considers, among other factors, the fitness of the carrier seeking to obtain the certificate, the fairness of the purchase price, the resulting competitive balance of the

industry, whether the operating rights sought to be purchased are dormant and whether the riding public would be benefited by Cotter Limousine's acquisition of Stephens' Certificate No. 69.

The Commission finds that the proposed transfer is consistent with the public interest. The operating rights to be transferred have not been dormant inasmuch as Stephens provided continuous service during the first six months of 1983 and Cotter Limousine, thereafter, received temporary approval to provide service under the certificate. Furthermore, because Stephens has stated his unwillingness to continue to render adequate service, a transfer of Certificate No. 69 to Cotter Limousine would certainly be of substantial benefit to the public. Cotter Limousine is able to provide a more responsive service to the public by contributing additional capital and purchasing new operating equipment. Moreover, the actions taken by Cotter Limousine's investors over the past several months to strengthen the company's financial condition have alleviated our concerns about Cotter Limousine's financial viability. Cotter Limousine has evidenced a willingness to comply with the Commission's orders, rules and regulations and appears otherwise fit to acquire Certificate No. 69. There is no discernible change in the competitive balance at the present time, since one carrier is simply taking the place of another previously active in the field. Additionally, no carrier filed a timely protest to the proposed transfer. Finally, the purchase price appears reasonable.

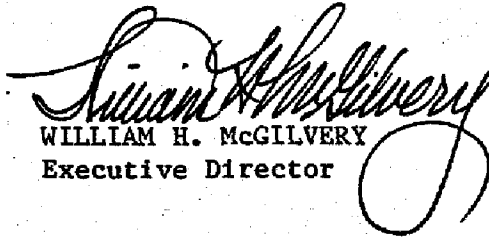
Pursuant to Commission Regulation No. 64-02 we shall require that separate books and records be regularly maintained for Cotter Executive Van Service apart from the books of Cotter Limousine. Expenses, both variable and fixed, must be maintained for Cotter Executive Van Service, as well as revenue figures.

THEREFORE, IT IS ORDERED:

1. That the application of Herbert G. Stephens to transfer Certificate No. 69 to Cotter Limousine of Washington, Inc., is hereby approved.
2. That Cotter Limousine of Washington, Inc., is hereby directed to file with the Commission within 30 days from the date of service hereof (a) two copies of its WMATC Tariff No. 1 as required by Commission Regulation No. 55, (b) a notarized statement of compliance with Commission Regulation No. 68 governing identification on motor vehicles, and (c) notice that the transfer transaction has been consummated.
3. That upon compliance with the conditions set forth in paragraph two, and acceptance of said tariff by the Commission, Certificate of Public Convenience and Necessity No. 69 will be reissued to Cotter Limousine of Washington, Inc.

4. That unless compliance is so made within 30 days from the date of service hereof, or such additional time as may be authorized by the Commission, the grant of approval herein will stand denied in its entirety effective upon the expiration of the said compliance time.

BY DIRECTION OF THE COMMISSION, COMMISSIONERS WORTHY, SCHIFTER AND SHANNON:

  
WILLIAM H. MCGILVERY  
Executive Director